

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2007-0013
MANDATORY MINIMUM PENALTY
IN THE MATTER OF
VALERO REFINING COMPANY-CALIFORNIA
BENICIA REFINERY
BENICIA , SOLANO COUNTY**

Pursuant to California Water Code Section 13385, this complaint is issued to the Valero Refining Company (hereafter Discharger) to assess \$18,000 in mandatory minimum penalties, based on a finding of the Discharger's violations of Waste Discharge Requirements Order No. 2002-0112 (NPDES No. CA 0005550) for the period between January 1, 2004 and November 1, 2006.

The Executive Officer finds the following:

1. On October 16, 2002, the California Regional Water Quality Control Board (Water Board) adopted Order No. 2002-0112 for the Discharger, to regulate discharges of waste from its facility. Order No. 2002-0112 became effective on January 1, 2003.
2. Water Code Section 13385(h)(1) requires the Water Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
3. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
4. Water Code Section 13385(i) requires the Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in any six consecutive months:
 - (a) Violates a waste discharge requirement effluent limitation.
 - (b) Fails to file a report pursuant to Section 13260.
 - (c) Files an incomplete report pursuant to Section 13260.
 - (d) Violates a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. Water Code Section 13385(l) allows the Water Board, with the concurrence of the Discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The Discharger may undertake an SEP up to the full amount of the penalty for liabilities less than or equal to \$15,000. If the penalty amount exceeds \$15,000, the maximum penalty amount that

may be expended on a SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.

6. Effluent Limitations

Order No. 2002-0112 includes the following applicable effluent limitations:

The discharge from Outfall 001 shall not exceed the following limits:

- Total Settleable Solids daily maximum, 0.2 mg/l-hr;
- Selenium, 50 µg/l interim daily maximum;
- Cyanide, 25 µg/l interim daily maximum;
- TCDD Equivalents interim monthly average 0.14 pg/l;
- pH shall not be outside the range of 6.0 to 9.0;
- An 11-sample 90-th percentile value of not less than 70 percent survival in bioassay test organisms.

The discharge from Outfalls 002, through and including 017 shall not exceed the following limits:

- Oil and Grease, 15 mg/l daily maximum;
- pH shall not be outside the range of 6.5 to 8.5.

7. Summary of Effluent Limit Violations

During the period between January 1, 2004, and November 1, 2006, the Discharger had fourteen violations of its effluent discharge limits. These violations include:

- five bioassay test failures;
- two oil and grease effluent violations;
- one pH effluent violation;
- three cyanide effluent limit violations;
- one total settleable solids effluent violation;
- one dioxin limit effluent violation;
- one selenium effluent violation.

The details of these limit violations are summarized in table 1 and discussed below.

8. The five bioassay violations are not subject to MMPs, because under Section 13385(i)(1)(D), toxicity effluent limitation violations are exempt if the permit contains pollutant-specific effluent limits for toxic pollutants, which is the case for this permit. Water Board staff has the discretion to recommend that the Water Board assess additional liability for this violation. In this case, Water Board staff recommends no additional penalty because the Discharger monitored the tests closely, and was able to divert the effluent to emergency storage ponds before the tests actually failed.
9. Oil and Grease is a Group I pollutant. Both of the oil and grease violations are defined as serious violations because they exceed the effluent limitation by 40% or more. They are each subject to a \$3,000 MMP under Section 13385(h) for a total of \$6,000. One of the oil and grease violations occurred on October 19, 2004 outside Outfall 0017. The area around Outfall 0017 was pressure washed to remove any standing oil and grease, and further testing showed no presence of oil and grease. The December 18, 2005, oil and grease violation occurred at Outfall 0008. Although the

Discharger was not able to determine a specific source, the piping was cleaned as a precaution. These oil and grease violations are isolated incidents and corrective actions were sufficient to prevent further oil and grease violations. Therefore, the minimum penalty is appropriate.

10. pH is neither a Group I nor a Group II pollutant, and because there were less than four effluent limit violations in the preceding 180 days, the pH effluent limit violation is not subject to MMP under Section 13385(i). In this instance, since the pH was only slightly outside the permit limit and occurred just once in this long time period, no further enforcement action is warranted.
11. The cyanide violation of June 9, 2005, is not a serious violation because cyanide is a Group II pollutant and the violation exceeds the effluent limitation by less than 20 percent. It is not subject to MMP under Section 13385 (i) because there were less than three violations in the preceding six consecutive months. The cyanide violations of January 6 and February 16, 2006, are defined as serious violations because cyanide is a Group II pollutant and the violations exceed the effluent limitation by 20 percent or more. These violations are each subject to a \$3,000 MMP under Section 13385(h) for a total of \$6,000. The Discharger is in the process of installing an online analyzer for cyanide levels, and expects that the project will be completed by April 2007. The analyzer will prevent these violations from recurring, so Water Board staff believes that the minimum penalty for these violations is appropriate.
12. Total Settleable Solids is defined as a serious violation because it is a Group II pollutant and the violation exceeds the effluent limitation by 20 percent or more. This violation is subject to a \$3,000 MMP under Section 13385(h). This exceedance occurred because polymer injection ceased due to a treatment plant upset, resulting in unsettled solids carrying over to the effluent. The minimum penalty is appropriate in this case because it is an isolated incident, and the Discharger corrected the problem by adjusting the polymer injection rate.
13. TCDD equivalents (dioxin) is defined as a serious violation because it is a Group II pollutant and the violation exceeds the effluent limitation by 20 percent or more. However, this violation is exempt from MMP under Section 13385(j)(1)(B). Lake Herman, upstream of the refinery, lost control of its discharge due to the lake overfilling and breaching its spillway. This, in addition to the intensity of the storm and the high perigean tides, contributed to an exceptional situation which was unpreventable. For this reason, this violation will not be fined.
14. Selenium is defined as a serious violation because it is a Group II pollutant and the violation exceeds the effluent limitation by 20 percent or more. This violation is subject to a \$3,000 MMP under Section 13385(h). The Discharger has found that the exceedance occurred when the back-up tower recycle valves' high selenium material contents were purged to the wastewater treatment plant during a maintenance event which occurs about every one and a half to two years. Effluent was diverted to the emergency retention ponds the same day. Since it is a planned event, the Discharger was able to review its standard operating procedures to include removing sludge buildup before performing this operation. Since the Discharger investigated and corrected the problem, the minimum penalty is appropriate.
15. Water Code Exception
Water Code Section 13385(j) provides some exceptions related to the assessment of MMPs for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.
16. Assessment of MMPs
Six of the fourteen violations are subject to an MMP. The total MMP amount is \$18,000.

17. Suspended MMP Amount

Instead of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount of up to \$16,500 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

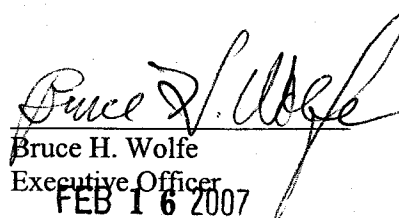
18. SEP Categories

If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

1. Pollution prevention;
2. Pollution reduction;
3. Environmental clean-up or restoration; and
4. Environmental education.

THE VALERO REFINING COMPANY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed MMPs in the total amount of \$18,000.
2. The Water Board will hold a hearing on this Complaint on April 11, 2007, unless the Discharger waives the right to a hearing by signing the included waiver and checks the appropriate box. By doing so, the Discharger agrees to:
 - a) Pay the full penalty of \$18,000 within 30 days after the signed waiver becomes effective, or
 - b) Propose an SEP in an amount up to \$16,500. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$18,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., March 30, 2007, to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Project. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty of \$16,500. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. The signed waiver will become effective on the day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.


Bruce H. Wolfe
Executive Officer
FEB 16 2007

Date

Attachments: Waiver
Table 1: Violations
Standard Criteria and Reporting Requirement for Supplemental Environmental Project

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than March 30, 2007.

- ☐ Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0013 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.
- ☐ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0013, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$16,500 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than March 30, 2007. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Date

Title/Organization

Table 1 - VIOLATIONS

Item No.	Date of Violation	Effluent Limitation Described - E-001 except noted	Effluent Limit	Reported Value	Type of Violations ¹	Penalty ²	Start of 180 days ³
1	12-Jul-04	11-sample 90% Survival Moving Median bioassay requirement	70	25			14-Jan-04
2	22-Jul-04	11-sample 90% Survival Moving Median bioassay requirement	70	45			24-Jan-04
3	11-Aug-04	11-sample 90% Survival Moving Median bioassay requirement	70	25			13-Feb-04
4	19-Oct-04	E-007 Oil & Grease Daily Maximum mg/l	15	21	C1 (also S)	\$3,000	22-Apr-04
5	27-Nov-04	E-005 pH Minimum	6.5	6.24	C2		31-May-04
6	5-Jan-05	Total Settleable Solids Daily Maximum ml/l-hr	0.2	1	C3 (also S)	\$3,000	9-Jul-04
7	8-May-05	11-sample 90% Survival Moving Median bioassay requirement	70	60			9-Nov-04
8	1-Jun-05	11-sample 90% Survival Moving Median bioassay requirement	70	40			3-Dec-04
9	9-Jun-05	Cyanide Interim Daily Maximum ug/l	25	26	C2		11-Dec-04
10	18-Dec-05	E-008 Oil & Grease Daily Maximum mg/l	15	29.2	C1 (also S)	\$3,000	21-Jun-05
11	1-Jan-06	Cyanide Interim Daily Maximum ug/l	25	33	C2 (also S)	\$3,000	5-Jul-05
12	31-Jan-06	Dioxin Concentration Monthly Average pg/L ⁴	0.14	0.53933	N.A.	N.A.	N.A.
13	16-Feb-06	Cyanide Interim Daily Maximum ug/l	25	30	C3 (also S)	\$3,000	20-Aug-05
14	20-Feb-06	Selenium Daily Maximum ug/l	50	268.5	C3 (also S)	\$3,000	24-Aug-05
Total Fine Amount							\$18,000

¹ C = Chronic - The number that follows represents the number of chronic violations in the past 180 days; S = Serious.

² As indicated in finding No. 8, toxicity effluent limitation violations are not fined when the waste discharge requirements contain pollutant-specific effluent limitations for toxic pollutants.

³ This column documents the start date for assessing chronic violations. As indicated in Finding No. 4, Water Code Section 13385(i) requires the Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations if the Discharger violates an effluent limit four or more times in any six consecutive months.

⁴ The dioxin violation was exempt from MMP as per Water Code Section 13385(j)(1)(B).

